

Date of Hearing: April 18, 2017

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE

Ash Kalra, Chair

AB 611 (Dababneh) – As Introduced February 14, 2017

SUBJECT: Mandated reporters of suspected financial abuse of an elder or dependent adult: powers of attorney.

SUMMARY: Authorizes mandated reporters of financial institutions to not honor any power of attorney if they make, or have actual knowledge that another person has made a report to an adult protective services agency or a local law enforcement agency, if they believe the elder or dependent adult who executed the power of attorney may be subject to financial abuse.

EXISTING LAW:

- 1) The Elder and Dependent Adult Civil Protection Act, was enacted to prevent elder and dependent adult abuse and neglect, and to prosecute those that inflict that abuse or neglect on elders and dependent adults.
- 2) Defines “financial abuse” of an elder or dependent adult as the taking, secreting, appropriation or retention of real or personal property of the elder or dependent adult to a wrongful use or with intent to defraud, or both, or assisting another person in the above activities, and deems the taking, secreting, appropriating, or retaining of property for a wrongful use, if it is done in bad faith.
- 3) Requires mandated reporters who observe or have knowledge of elder or dependent adult physical or financial abuse or neglect, or is told by the elder or dependent adult that he/she has experienced abuse, to immediately report the known or suspected abuse.
- 4) Defines “mandated reporter” as any person who is a provider of care to the elder or dependent adult, a health practitioner, clergy member, employee of county adult protective services or a member of local law enforcement.
- 5) Defines “mandated reporter of suspected financial abuse of an elder or dependent adult” as all officers and employees of financial institutions, and defines “financial institution” as a depository institution, an institution-affiliated party, or a federal, state, or institution-affiliated party credit union.
- 6) Provides that a mandated reporter of suspected financial abuse of an elder or dependent adult who fails to report financial abuse shall be subject to a civil penalty not exceeding \$1,000. If the failure to report is willful, the civil penalty may be up to \$5,000.
- 7) Specifies that the civil penalty shall be paid by the financial institution who is the employer of the mandated reporter to the party bringing the action.

FISCAL EFFECT: Unknown.

COMMENTS:

Author’s Statement: “This bill provides additional protection for elders and dependent adults by preventing financial abuse before it occurs. Officers and employees of financial institutions can stop financial transactions if they have filed, or know of anyone else that has filed, a financial abuse report on an individual, even if that individual has a power of attorney. The individual with the power of attorney may appeal the action to a Judge.”

Elder Financial Abuse: The California Department of Social Services reports that for fiscal year 2015/16 Adult Protective Services received 12,177 reports of financial abuse from financial institutions. This represented 7% of all reports of abuse and neglect and an average of 1,014 reports from financial institutions per month. There was an average of 756 reports of abuse confirmed each month in fiscal year 2015/16. There were an additional 1,556 inconclusive financial abuses cases each month. Inconclusive means that the Department had reason to believe that the abuse occurred but, no proof. Bank officers and employees are regularly presented with situations that require them to honor a power of attorney despite having knowledge that a financial elder abuse report has been filed on the holder of the power of attorney.

According to the *True Link Report on Elder Financial Abuse 2015*, \$16.99 billion is lost to financial exploitation annually, \$12.76 billion is lost to criminal fraud or identity theft annually, and \$6.67 billion is lost to deceit or theft enabled by a trusting relationship annually.

How Can a Power of Attorney be Used? A Power of Attorney can be used to give another person the right to sell a car, home, or other property in the place of the maker of the Power of Attorney. A Power of Attorney might be used to allow another person to sign a contract for the maker of the Power of Attorney (the person who makes a power of attorney is called the “principal”).

It can be used to give another person the authority to make health care decisions, conduct financial transactions, or sign legal documents that the principal cannot do for one reason or another. With few exceptions, Powers of Attorney can give others the right to do any legal acts that the makers of the Powers of Attorney could do them themselves.

The Uniform Power of Attorney Act (UPOAA) was drafted and adopted in 2006 by the Uniform Law Commission to replace the former Uniform Durable Power of Attorney Act. The purpose of UPOAA is to provide uniformity throughout the states, and enhance the usefulness of durable powers while protecting the principal, the agent, and those who deal with the agent. Section 120 of UPOAA provides that a third person is not required to honor a power of attorney if the third person makes, or has actual knowledge that another person has made, a report to the local adult protective services agency or the local law enforcement agency. To date, 21 states have adopted the UPOAA.

Arguments in Support: According to the California Bankers Association, “This measure enhances existing protections for elders and dependent adults by ensuring mandated reporters have the statutory authority to prevent financial abuse perpetrated by agents with a power of attorney who may be stealing money and assets.”

Arguments in Opposition: “California Advocates for Nursing Home Reform opposes AB 611, a bill that would permit bank tellers to refuse to honor a valid power of attorney (POA) – and

presumably freeze all access to an elder or dependent adult's funds to pay for their food, medicine, and shelter – based on a single, unsubstantiated report to Adult Protective Services (APS) or alleged financial abuse. ...

“We expect that AB 611 would lead to more harm than good by depriving elder and dependent adults access to vital funds. ...

“If we want to empower banks to refuse to accept valid powers of attorney, the evidentiary requirement should be greater than a single report to APS, which anyone can cause simply by making a phone call.”

REGISTERED SUPPORT / OPPOSITION:**Support**

California Bankers Association – Sponsor
California Community Banking Network
California Credit Union League
California Retired Teachers Association (CalRTA)
California Senior Legislature
California State Sheriffs' Association (CSSA)
National Association of Social Workers, California Chapter (NASW-CA)

Opposition

California Advocates for Nursing Home Reform (CANHR)

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